

# SIMON PHILIPS



## Admissions

Barrister: February 2002

Solicitor: December 1995

## Qualifications

BA, LLB (Hons), University of Sydney

Grad Dip Legal Prac, University of Technology, Sydney

## Areas of Practice

Appellate	Building & Construction
Commercial	Contracts
Corporate insolvency	Corporations Law
Equity	Insurance
Leases	Professional Negligence
Property	Sports Law

## Biography

Simon first commenced practice in 1995 as a solicitor with Phillips Fox (now DLA). He later moved to Minter Ellison before coming to the Bar in February 2002, where he is now a barrister of 19 years standing.

Simon is an experienced advocate who is able to advise on and appear in a wide array of matters and issues. He has appeared regularly in the NSW Court of Appeal in a variety of matters. He has extensive experience in claims for breach of contract and equity, and has significant expertise in insurance, building and construction, leases, property and sports law.

## Courts

Simon regularly appears in:

The Supreme Court of New South Wales

The New South Wales Court of Appeal

The District Court of New South Wales

NSW Civil and Administrative Tribunal

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## Simon Philips

12 Wentworth Selborne Chambers

Level 12, 180 Phillip St, Sydney NSW 2000

(02) 9223 8233 [simon.philips@12thfloor.com.au](mailto:simon.philips@12thfloor.com.au)

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## Significant Appearances, Judgments and Reported Cases

### *Property and Damages*

- *Sydney Local Health District v Macquarie International Health Clinic Pty Ltd* [2020] NSWCA 274  
Appeared (with Noel Hutley SC) for respondent/cross appellant in appeal from decision of Kunc J in Inquiry as to Damages for trespass. One of the principal issues in the appeal was whether the trial judge had erred in his assessment of damages by way of 'mesne profits' and the application of the 'user principle'.
- *Keever & Ors v The Owners Strata Plan 1813* [2020] NSWCATCD 25 May 2020; 14 July 2020  
Appeared in NCAT on successful application by individual lot owners in a strata scheme against owners corporation for appointment of a compulsory strata manager and reduction of special levies. Appeared for respondents on appeal from this decision to NCAT Appeals Panel (judgment in appeal reserved).
- *Norsk Dor Pty Ltd v Tuxford Pty Ltd* [2019] NSWCATCD 2 March 2020; [2020] NSWCATAP 183  
Appeared before NCAT and NCAT Appeal Panel for successful respondent/cross claimant lessor in proceedings arising from a lease relating to commercial premises used as a nightclub to which the *Retail Leases Act* applied.
- *Papantoniou v Stonewall Hotel Pty Ltd* [2018] NSWCA 85; 19 BPR 38,547; [2018] NSWConvR-398; ANZ ConvR 18-090  
Appeared for successful respondent to appeal from decision of Darke J in relation to the validity of the exercise of an option to renew a lease
- *Golden Goal Pty Limited v Dapto Bowling Club Limited (in liquidation)* [2018] NSWSC 1431  
Appeared for a lessee on an application to extend operation of a caveat as against a liquidator of a lessor company (in liquidation) which had disclaimed the subject lease
- *Macquarie International Health Clinic Pty Ltd v Sydney Local Health District* [2016] NSWSC 1587; [2019] NSWSC 916;  
Appeared with Robert Dubler SC in a lengthy and complex hearing on an Inquiry as to Damages suffered by a wrongfully dispossessed tenant kept out of a development site for a 15 year period. The hearing involved expert evidence from more than 20 expert witnesses across a variety of disciplines, including forensic accounting, town planning, quantity surveying, hospital design, construction and fit out, and property and share valuations.
- *NP Leisure Pty Ltd v National Parks and Wildlife Service* [2017] NSWCATCD  
Appeared before NCAT for successful applicant in dispute over application of Retail Leases Act and jurisdiction of NCAT
- *Gelledge & Gelledge* [2012] FamCA 641 Appeared with John Lloyd SC for the applicant in proceedings concerning the valuation of the assets in a nursing home business.

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- [\*Granville and Districts Soccer Football Association Inc. & Anor v Parramatta Melita Eagles Sports Club Limited\* \[2011\] NSWSC 1633](#)  
Appeared for a sporting club in proceedings arising from a dispute with its sub-lessee (another sporting body) as to the terms of the sub-lease of a football stadium.
  - [\*Macquarie International Health Clinic Pty Ltd v Sydney South West Area Health Service\* \[2010\] NSWCA 268; 15 BPR 28,563](#)  
Appeared with Noel Hutley SC and Robert Dubler SC in a successful appeal in relation to a claim by a tenant under s 129 of the *Conveyancing Act* and for breach of an express utmost good faith term in a 99 year lease.
  - [\*Macquarie International Health Clinic Pty Ltd v Sydney South West Area Health Service\* \[2008\] NSWSC 738; \[2009\] NSWSC 629; \[2010\] NSWSC 1139](#)  
Appeared with Robert Dubler SC in long running proceedings by a dispossessed tenant against the landlord under a 99year lease, seeking possession and damages for trespass, breach of s 129 of the *Conveyancing Act* and for breach of an express contractual term to act with utmost good faith.

#### *Equity*

- [\*Jaeger v Bowden \(No 2\)\* \[2016\] NSWSC 897; \[2017\] NSWSC 324](#)  
Appeared with Michael Willmott SC for the defendants in proceedings relating to a partnership and succession dispute seeking an accounting arising from the distribution of a deceased estate and sale (and re-purchase) of a hotel.
- [\*Ko v CKAS Enterprises Pty Ltd\* \[2018\] NSWSC 1876](#)  
Appeared on successful claim that lessor estopped from asserting that option to renew a lease had not been exercised
- [\*Psyfari Pty Ltd v Rathcrown Pty Ltd\* \[2017\] NSWSC 776](#)  
Appeared for successful applicants for an interlocutory injunction
- [\*Lahoud v Lahoud\* \[2009\] NSWSC 623; \[2010\] NSWSC 1297](#)  
Appeared with Martin Einfeld QC in a successful application for specific performance and reduction in damages.
- [\*St George Soccer Football Club Inc v Soccer NSW Ltd\* \[2005\] NSWCA 481; \*Council of City of Botany Bay v Soccer NSW Ltd\* \[2004\] NSWSC 1262](#)  
Appeared with Peter Biscoe QC and Tim Hale SC respectively in applications for injunctions against a sporting body from treating as valid decisions to exclude member clubs from competitions and for damages for breach of contract and the *Trade Practices Act* for inconsistently applying membership criteria.

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### *Contract*

- [\*Macquarie International Health Clinic Pty Ltd v Sydney Local Health District \[2020\] NSWCA 161\*](#); 383 ALR 688; 19 BPR 40,463  
Appeared with Noel Hutley SC on appeal from decision of Ward CJ in Eq in relation to the validity of the termination of a suite of contracts and of notices issued under s 129 of the *Conveyancing Act*
- [\*Macquarie International Health Clinic Pty Limited v Sydney Local Health District \[2019\] NSWCA 281\*](#)  
Appeared for successful applicant for a stay of orders pending the hearing and determination of an appeal
- [\*Lien v Clontarf Residential Pty Ltd \[2018\] OSC 94 \[2019\] 1 Qd R 107\*](#)  
Appeared in Supreme Court of Queensland for defendant in contractual dispute in relation to a joint venture and property development project in Brisbane
- [\*Garth Barnett Interior Design Pty Ltd v Ellis \[2009\] NSWCA 193 \(29 June 2009\)\*](#)  
Successfully opposed an appeal from a decision of the District Court to grant preliminary discovery in a claim in contract.

### *Corporations/Competition Law*

- [\*In the matter of Dungowan Manly Pty Ltd \(in liq\) \[2015\] NSWSC 915; \[2015\] NSWSC 491; 105 ACSR 648\*](#)  
Appeared for a firm of solicitors defending (successfully) proceedings brought by a company in liquidation and former clients in relation to a mortgage over a strata title property and for unpaid fees, as well as in related proceedings brought in the District Court.
- [\*Sundararajah v Teachers Federation Health Ltd \[2011\] FCA 1031; 283 ALR 720\*](#)  
Successful defence of proceedings brought by a dentist against a health fund for the alleged wrongful termination of contract and misuse of market power under s 46 of the *Trade Practices Act*.

### *Professional Negligence*

- [\*Mark Hackelton T/as Hackeltons Accountants and Advisers v Manbead Pty Ltd & Another \[2019\] NSWDC 147\*](#)  
Appeared for firm of accountants who successfully recovered outstanding fees and resisted claim against them for professional negligence.
- [\*Su v So; Verekers Lawyers v So \[2010\] NSWCA 119\*](#)  
Successfully opposed an appeal from a decision of the District Court in a claim against a firm of solicitors.

### *Sports Law*

- Appeared as advocate before the FFA Disciplinary and Ethics and Appeals Committees in matters involving Avraam Papadopoulos, Roy O'Donovan, Jamie Young and Eastern Suburbs Soccer Football Association in 2017, 2018 and 2019.

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**Publications and Papers**

- "*Corporate Governance and Potential Liability for Sporting Organisations in light of the Peptide Inquiry*" - Paper presented to Tristate Sports Law Conference September 2013
- "*Insurance Law - Proportionate Liability Update*" - Paper presented to Twelfth Floor Quarterly Seminar series October 2013
- "*Duty Judge Applications, the Commercial List and Disclosure*" - Paper presented to North Coast Law Society Conference, February 2017 and City of Sydney Law Society, September 2018
- "*Managing Employees, Contractors and Volunteers in Sporting Organisations – Key Contract Imperatives*" – Paper presented to TEN Sports Law Conference May 2017
- "*Using, Drafting and Enforcing Caveats - How secure is your 'security'?*" Paper presented to Far North Coast Law Society Conference, February 2021

**Appointments and other interests**

- Member, National Sports Tribunal
- Chair (occasional), Appeals Committee, Eastern Suburbs Football Association
- Former Arbitrator Member, Football Federation Australia National Dispute Resolution Panel
- Former Director and Chair, Legal and Regulatory Committee, Football NSW Ltd (2011 – 2016)
- Former member, Sydney University Alumni Council
- President and current player, Sydney University Soccer Football Club
- Founding member and current player, NSW Bar Football Club

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